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THE ELEVENTH AMENDMENT AND THE NON-SUABILITY OF THE STATE.

When the majority of the Supreme Court of the United States decided in *Chisholm* v. *Georgia* (1793), 2 Dall. (2 U. S.) 419, that under the second section of the third article of the Constitution, and under the Judiciary Act, the States composing the Union were liable to suit in the Federal Courts by citizens of other States, the law as declared was promptly changed by the adoption of the Eleventh Amendment. That Amendment was proposed to the legislatures of the several States by the Third Congress, September 5, 1794, and its adoption was announced by the President's proclamation, January 8, 1798. The political necessity for the Amendment at the time was recognized by statesmen of both the Federal and the Democratic school; by Federalists, because they had obtained the assent of the States to the Constitution as adopted by persuading them, among other things, that they were surrendering no portion of their sovereign immunity from suit (argument of Hamilton in *The Federalist*, No. LXXXI; arguments of Madison and Marshall in the Virginia Convention, 3 Elliott's Debates, 2d ed., 533, 555); by the Democrats, because they could not tolerate Federal judicial authority over the States beyond the extent to which it had plainly been yielded.

The wisdom of the Amendment seems doubtful at this day in the light of recent history of shameless repudiation

of State debts in the South. Federal Courts could have taught ethics with effect in Louisiana and Virginia, and other Southern States during the last twenty years, but for the fundamental law which forbade bringing the State before the bar of the Court at the instance of private non-resident suitors.

It is observable that it is only during the past year that it has been judicially declared by the Court of last resort that the States of the Union are not subject to suit in the Federal Courts at the hands of their own citizens: *Hans* v. *Louisiana* (1890), 134 U. S. 1. This involved a different construction of the Constitution from that made in *Chisholm* v. *Georgia*, and accordingly the views expressed in that case have been disapproved. With the law already established that the States without their own consent were not subject to suit in their own courts by individual citizens, and with such cases as *United States* v. *Lee* (1882), 106 U. S. 196 declaring that the United States Government as such is entitled to the same immunity, the decision in *Hans* v. *Louisiana* was necessary, before the doctrine of the publicists that a sovereign State is not liable to suit without its own consent could be said, in all its phases, to be part of our constitutional law.

It is not the present purpose to discuss the political philosophy of the doctrine, nor to justify or criticise the applications of it that have been made to the Federal Constitution, whereby that instrument has been given a meaning quite apart from what its letter alone would imply, as has notably been done in the case of *Hans* v. *Louisiana*. The suggestion merely occurs that, with the law of government immunity from suit, except as it consents, now fully established, the time is ripe for an examination of the scope and limitations of the doctrine as declared by the Supreme Court.

It is perhaps the one good that has come of the repudiation of State debts in the South, that with the litigation it has invited, it has developed and settled judicial opinion very rapidly on an important branch of constitutional law. It is, of course, small consolation for the individual litigants who have usually, in the end, lost their suits

against the States, to know that they have made law if they have not made their money; but to the student alive to the development of the law, it is of peculiar interest to observe, as in the end it is of value to the people themselves to witness, doctrines taking definite and final form and reaching definite and final meaning as the courts pass from precedent to precedent.

WHAT IS A SUIT AGAINST THE STATE.

It was at one time held that whether or not a suit is against the State is to be determined by the fact whether or not the State is the nominal defendant of record. This appeared to be the view of Chief Justice MARSHALL in *Osborn* v. *Bank of the United States* (1824), 9 Wheat. (22 U. S.) 738, where he said:

> It may, we think, be laid down as a rule which admits of no exception, that in all cases where jurisdiction depends on the party, it is the party named in the record. Consequently, the Eleventh Amendment, which restrains the jurisdiction granted by the Constitution over suits against States, is, of necessity, limited to those suits in which a State is a party on the record.

It was also adopted and made one of the grounds for the judgment in *Davis* v. *Gray* (1872), 16 Wall. (83 U. S.) 203, where the Court, with two justices dissenting, sustained an injunction against the Commissioner of the Texas Land Office and the Governor of the State, restraining them in their official capacity from selling and delivering patents for land, in violation of the rights of a railroad.

The expressions of opinion in these cases have not been maintained by the Court as correctly stating the law. Chief Justice MARSHALL has been shown (*In re Ayers*, 1887, 123 U. S. 443, 488) to have expressed himself otherwise than in *Osborn* v. *The Bank*, in the later cases of *The Governor of Georgia* v. *Madrazo* (1828), 1 Pet. (26 U. S.) 110, and *Ex parte Madrazo* (1833), 7 Pet. (32 U. S.) 627, and the decision in *Osborn* v. *The Bank* has been placed upon other grounds than that of jurisdiction; while *Davis* v. *Gray* has been questioned if not altogether overruled as authority:

Cunningham v. *Macon & Brunswick RR. Co.* (1883), 109 U. S. 446, 453. Of the present Supreme Court Justices who have had an opportunity of passing upon the question, Justice HARLAN is perhaps the only one who holds to the doctrine once thought to be declared in *Osborn* v. *The Bank.* His dissenting opinions in *Louisiana* v. *Jumel* (1882), 107 U. S. 746; *Antoni* v. *Greenhow* (1882), Id. 801; *Cunningham* v. *Macon & Brunswick RR. Co.* and *In re Ayers* are interesting protests against the restatement of the law of the earlier cases.

The present doctrine is, that whether the State is the actual party defendant in the sense intended in the Constitution, is to be determined from the nature of the case as presented by the whole record. The following were suggested by the Court in *Poindexter* v. *Greenhow* (1884), 114 U. S. 270, as tests for determining when a suit would be considered as brought against the State. That would be a suit against the State—

(1.) Where the State is named as a party on the record.

(2.) Where the action is brought directly upon the State's contract.

(3.) Where the suit is brought to control the discretion of an executive officer of the State.

(4.) Where the suit is brought for the purpose of administering funds actually in the public treasury.

(5.) Where the suit is in effect an attempt to compel officers of the State to do acts which constitute a performance of its contract by the State.

(6.) Where the suit brought is such that the State is a necessary party in order that the defendant may be protected from liability to it.

No illustrations from the cases are of course needed as to the first of these tests. The remaining tests apply where the State is not the nominal defendant. Among the many interesting applications of them, a few may be noted. It will be found that in a number of cases, more than one of the tests apply.

The Governor of Georgia v. *Madrazo* was a libel and

claim against the Governor of Georgia in his official capacity for certain slaves and the proceeds of certain others which had been sold and the money realized therefrom paid into the State Treasury. Chief Justice MARSHALL denied jurisdiction, on the ground that the State was in effect a party, since its Governor was sued not by his name, but by his style of office, and the claim made upon him was entirely in his official character. Another ground for the decision would perhaps be, that the demand was for money actually in the treasury of the State, mixed up with its general funds, and for slaves in possession of the Governor, and that the suit was therefore brought for the purpose of administering funds actually in the State Treasury.

Louisiana v. *Jumel* was a *mandamus* and injunction against officers of Louisiana, constituting the State Board of Liquidation, to compel them to carry out a contract with the State for payment of coupons on its bonds repudiated by a subsequent constitutional amendment, and to apply funds in the treasury already collected to the redemption of bonds contracted to be redeemed, and to execute generally the act embodying the contract. The Court denied relief as an attempt to control the discretion of executive officers of the State, and to compel them to do acts constituting a performance of the State's contract, and as also an effort to administer funds actually in the public treasury.

In *Hagood* v. *Southern* (1885), 117 U. S. 52, the principles of the case of *Louisiana* v. *Jumel* were affirmed and applied, and it was held that holders of State scrip which the State of South Carolina had issued for value and contracted should be received in payment of all taxes and dues to the State, could not compel the State officers to take action to fulfill the State's contract. Justice MATTHEWS stated the doctrine of the identification of the State officers with the State in language which has been well condensed in the syllabus:

When a suit is brought in a court of the United States against officers of a State, to enforce performance of a contract made by the State, and the controversy is as to the validity and obligation of the contract, and

the only remedy sought is the performance of the contract by the State, and the nominal defendants have no personal interest in the subject matter of the suit, but defend only as representing the State, the State is the real party against whom the relief is sought, and the suit is substantially within the prohibition of the Eleventh Amendment.

A most exhaustive discussion of the subject is found in *In re Ayers*, decided in December, 1887. The case, it will be remembered, came before the Supreme Court on *habeas corpus*, on the application of the Attorney General of Virginia, who was committed for contempt for disobeying a restraining order of the Circuit Court of the United States for the Eastern District of Virginia, requiring him to discontinue and abstain from prosecuting certain suits on behalf of Virginia for collection of taxes. The order was made by way of final decree on a bill in equity filed by aliens against the State Auditor, the Attorney General and others, to restrain them from bringing and prosecuting in the name and for the use of the State, as required by an Act of Assembly, suit against taxpayers who in payment of taxes, had tendered coupons of a class already decided by the Supreme Court to be receivable for taxes under a prior contract of the State. The petitioner was released on the ground that the suit in which the injunction had issued was in effect against the State. The case was the converse of such cases as *Louisiana* v. *Jumel* and *Hagood* v. *Southern*, in deciding that not only was it a suit against a State to seek by legal process to require its officers to perform its contract, but it was likewise such a suit to seek by such process to restrain them from doing acts required of them by State statute, which when performed would constitute a breach of the State's contract. The opinion in this case, with its discussion of the doctrine of State nonsuability, leaves little to be desired in the way of completeness. It is in many respects a landmark on the subject, and belongs not only among the masterly judgments of the late Justice MATTHEWS, but also among the great judgments of the Court.

It has been sometimes possible to determine the question of jurisdiction, without deciding whether the State's officers represent the State so as to relieve them from suit in its be-

half. For example, in *Cunningham* v. *Macon & Brunswick RR. Co.*, which was a bill of foreclosure by holders of certain railroad bonds against a railroad, and where it was attempted to set aside a sale to the State of Georgia, which had bought the road at receiver's sale on a prior mortgage, the Governor and Treasurer being joined as parties, the proceedings were dismissed on the ground that, without reference to the question of the Governor and Treasurer representing the State, the State was a necessary party, and therefore no decree could be made for the plaintiff, inasmuch as the State was not suable.

The cases of *New Hampshire* v. *Louisiana* and *New York* v. *Louisiana* (1882), 108 U. S. 76, are interesting illustrations of a phase of the doctrine that whether or not the State is a party is to be determined from all the facts, and not merely from the appearance of the record as to the nominal parties. Certain of the bonds sought to be recovered upon in *Louisiana* v. *Jumel* were assigned to the States of New Hampshire and New York, who then brought suits in the Supreme Court, invoking its original jurisdiction on the ground that the suits were controversies between States. The Court found, however, that the States, plaintiffs, had no interest of their own in the controversy, but were only nominal parties, the individual bondholders being the real parties behind them, and declined jurisdiction.

The latest cases where jurisdiction has been declined on the foregoing principles are *North Carolina* v. *Temple* (1890), 134 U. S. 22, and *New York Guarantee Co.* v. *Steele* (1890), Id. 230, in the former of which it was sought to compel the Auditor of North Carolina and the State herself to levy a special tax for the benefit of certain holders of State bonds, and in the latter a similar suit was brought against the State Auditor of Louisiana alone, but without joining the State. The actions were of course held not sustainable.

WHAT IS NOT A SUIT AGAINST THE STATE.

The most satisfactory attempt at classification of the cases where jurisdiction is entertained, is that of Justice MILLER

in *Cunningham* v. *Macon & Brunswick RR. Co.* He observed that there are at least three classes of cases where the State, although affected by the decision, is not a necessary party so as to defeat jurisdiction—

(1.) The Court will determine the rights of the parties to suits as to property of the State, or property in which the State has an interest, so long as it is not necessary to take property forcibly from the possession of the government.

(2.) The Court takes jurisdiction against individuals sued in tort for acts injurious to the persons or property of others, although their defence is that they acted under the orders of government.

(3.) The Court enforces the performance and enjoins the violation of ministerial duties of public officers.

The illustrations given of the first of these classes are, *The Siren* (1868), 7 Wall. (74 U. S.) 152, 157; *The Davis* (1869), 10 Wall. (77 U. S.) 15, 20, and *Clark* v. *Barnard* (1882), 108 U. S. 436, in each of which the government appeared as claimant to a *res*, and it was held the rights of the parties, including that of the government, would be determined, even though the event would be to deprive the government of rights of property claimed by it.

The Siren was a condemnation proceeding by the United States in a prize court, to secure a prize captured at sea. The owner of a vessel damaged by the prize in proceeding to port, was allowed to intervene and get his damages from the fund going to the captors. In *The Davis*, a claim of lien for salvage against the United States was enforced. The government having apparent right of property in a cargo of cotton, but to obtain possession being obliged to appear as a claimant in court, the lien for salvage by an individual was considered in the same proceeding. In *Clark* v. *Barnard*, the State of Rhode Island appearing as a claimant to a fund in court, assignees in bankruptcy of other parties claiming the fund were allowed to file a bill in equity against the State Treasurer to restrain him from collecting it.

A number of illustrations of the second of the above classes are given by Justice MILLER, and several more of

peculiar interest have occurred since his classification in *Cunningham* v. *Macon & Brunswick RR. Co.*, the most notable being the *Virginia Coupon Cases* (1884), 114 U. S. 269.

In *Mitchell* v. *Harmony* (1851), 13 How. (54 U. S.) 115, and *Bates* v. *Clark* (1877), 95 U. S. 204, trespass against officers of the United States army for seizing plaintiff's goods was sustained, and the official capacity of the defendants was not regarded in determining jurisdiction. Similarly, in *Meigs* v. *McClung* (1815), 9 Cr. (13 U. S.) 11; *Wilcox* v. *Jackson* (1839), 13 Peters (38 U. S.) 498; *Brown* v. *Huger* (1858), 21 How. (62 U. S.) 305; *Grisar* v. *McDowell* (1867), 6 Wall. (72 U. S.) 363, and *United States* v. *Lee*, actions of ejectment were maintained against United States officers for land occupied by them in their official capacity. As early as 1809 the Supreme Court, it will be remembered, decided the interesting case of *United States* v. *Peters*, 5 Cr. (9 U. S.) 115, where a *mandamus* was required to be issued to the representatives of David Rittenhouse, the Treasurer of Pennsylvania, commanding them to pay to certain libellants the proceeds of the sale of a vessel to which it had been decided the latter were entitled. It was held that the State Treasurer or his representatives, sued individually for detention of moneys, could not shelter themselves behind the State's immunity from suit, when the moneys were never in the possession of the State. In *Poindexter* v. *Greenhow*, it was held that detinue by a coupon holder lay against a State Treasurer who under the direction of one of the repudiating acts of Virginia had seized property of the former in payment of taxes after he had tendered him tax receivable coupons. In *White* v. *Greenhow* and *Chaffin* v. *Taylor*, decided at the same time, actions of trespass *d. b. a.* were sustained for offenses of the same character as in *Poindexter* v. *Greenhow*. And in *Allen* v. *Baltimore and Ohio Railroad Co.*, immediately following, an injunction was sustained against State officers to prevent them from distraining upon the property of a railroad com-

pany to collect taxes, after tender in payment and refusal of tax receivable coupons.

When the judgment in the case of *In re Ayers* was first announced, it was hastily supposed by some that *Poindexter* v. *Greenhow* had been in effect overruled. This supposition was removed upon examining the later case, when it was found that an important and valuable distinction had been made which, upon reflection, was seen to arise naturally between the cases. This distinction was found in the proposition that defence was the limit of redress by the individual against unconstitutional proceedings on the part of State officers. Resistance by pleading to actions of the government, or by bringing detinue to restore, or injunction to preserve, the *status quo*, or by bringing trespass for illegal interference with property under color of law, was shown to be a different thing from attempting in advance to prevent the State from suing at law, and its officers from obeying its demands up to the point of interference with the personal or property rights of the citizen in violation of the State's contract. In the very recent case of *McGahey* v. *Virginia*, 135 U. S. 662, decided in May, 1890, the Court reviewing all the previous decisions growing out of the Virginia repudiating acts, united for the first time to declare the distinctions made by the majority in *Poindexter* v. *Greenhow*, and *In re Ayers*. The language of Justice BRADLEY, speaking for the Court, while specifically referring to the Virginia acts under consideration, is sufficiently general in its application to be quoted at length as the final judgment of the Court upon the limits of actions by individuals against government officers in this class of cases. He says:

> No proceedings can be instituted by any holder of said bonds or coupons against the Commonwealth of Virginia, either directly by suit against the Commonwealth by name, or indirectly against her executive officers to control them in the exercise of their official functions as agents of the State. Any lawful holder of the tax-receivable coupons of the State issued under the Act of 1871 or the subsequent Act of 1879, who tenders such coupons in payment of taxes, debts, dues and demands due from him to the State, and continues to hold himself ready to tender the same in payment thereof, is entitled to be free from molestation in person or goods on account of such taxes, debts, dues, or demands, and may vin-

dicate such right in all lawful modes of redress—by suit to recover his property, by suit against the officer to recover damages for taking it, by injunction to prevent such taking where it would be attended with irremediable injury, or by a defence to a suit brought against him for his taxes or the other claims standing against him.

The early case of *Osborn* v. *The Bank* is now sustained on the above principles. The property of the Bank, having been seized under an unconstitutional statute, and, in violation of an injunction, having been placed in the treasury of the State, the officers who had committed the offense were required, as individuals, to restore it. The cases of *Dodge* v. *Woolsey* (1855), 18 How. (59 U. S.) 331; *Mechanics' & Traders' Bank* v. *Debolt* (1855), Id. 380, and *Jefferson Branch Bank* v. *Skelley* (1861), 1 Black (66 U. S.) 436, also belong to this class, although the question of the State's immunity from suit was not raised in them.

The third class of suits against State officers, which are not regarded as suits against the State, embraces that considerable body of cases against public officers involving the performance of their ministerial, as distinguished from their executive, duties. Among these, the most familiar are writs of *mandamus* against cabinet and other officers. The well-known cases of *Marbury* v. *Madison* (1803), 1 Cr. (5 U. S.) 137; *Kendall* v. *U. S.* (1838), 12 Pet. (37 U. S.) 524; *U. S.* v. *Schurz* (1880), 102 U. S. 378; *Butterworth* v. *U. S.* (1884), 112 Id. 50, and *U. S.* v. *Black* (1888), 128 Id. 40, belong to this class. *Mandamus* for the performance of ministerial duties may issue against every public officer, except, perhaps, the chief executive, when application is made in the courts of the government of which his is one of the branches. His exemption from amenability to process in such cases, is not that the suit against him is considered as brought against the State, but that, as one of the three co-ordinate branches of government, his department is independent of the judicial department as to all matters involving the conduct of his office. (See for a consideration of this subject at length, AMERICAN LAW REGISTER, N. S., Vol. XXVIII, note pp. 350–358).

Not only does *mandamus* lie to compel the performance of ministerial duties, but injunction likewise issues to prevent government officers from refusing to perform such duties. The difficulty in this class of cases is, to distinguish ministerial from executive functions, and several dubious decisions have been made because of this difficulty. Thus, in *Davis* v. *Gray*, as before observed, the Governor of Texas and the Commissioner of the State Land Office, at the instance of a railroad company, were enjoined from selling and delivering patents for alternate sections of land vested in the company. Justice MILLER, in *Cunningham* v. *Macon & Brunswick RR. Co.*, declared that "in enjoining the governor of the State in the performance of one of his executive functions, the case goes to the verge of sound doctrine, if not beyond it." The saving feature of the decision, as pointed out by the Justice, was that it stopped short of granting affirmative relief, and did not compel the State officers to perform any act towards perfecting the title of the company.

In *Board of Liquidation* v. *McComb* (1875), 92 U. S. 531, the Louisiana Board of Liquidation, of whom the duty was required to issue new bonds of the State in exchange for certain old indebtedness, was restrained, at the instance of a holder of new bonds already issued, from issuing some of the remaining bonds for indebtedness not contemplated in the law to be taken up by the new issue. Justice BRADLEY, in this case, stated the principle upon which the jurisdiction is taken in this class of causes. His language has been adopted in several of the later cases:

> The objections to proceeding against State officers by *mandamus* or injunction are, *first*, that it is in effect proceeding against the State itself, and, *second*, that it interferes with the official discretion vested in the officers. It is conceded that neither of these can be done. A State without its consent, cannot be sued as an individual, and a court cannot substitute its own discretion for that of its executive officers, in matters belonging to the proper jurisdiction of the latter. But it has been settled, that where a plain official duty requiring no exercise of discretion is to be performed, and performance is refused, any person who will sustain a personal injury by such refusal, may have a *mandamus* to compel performance; and when such duty is threatened to be violated by some positive

official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it.

There are several cases reported among the earlier decisions of the Supreme Court, where jurisdiction was taken apparently contrary to the above principles. But in none of them was the question of jurisdiction raised, and they are therefore of slight value as authorities on the point. Such cases are *State of New Jersey* v. *Wilson* (1812), 7 Cr. (11 U. S.) 167; *Woodruff* v. *Trapnall*, (1850), 10 How. (51 U. S.) 190; *Carpenter* v. *Pennsylvania* (1854), 17 How. (58 U. S.) 456.

In *Cohens* v. *Virginia* (1821), 6 Wheat. (19 U. S.) 264, it was argued by counsel for the State, that a case brought on writ of error or appeal to the Supreme Court from a lower court, where the State had been plaintiff and the plaintiff in error defendant, was a suit against the State, but the contention was negatived by the Court.

That the interest of a State in the controversy does not necessarily make the suit against the State, would seem sufficiently obvious without the decisions of *Bank of U. S.* v. *The Planters' Bank* (1824), 9 Wheat. (22 U. S.) 904, and *Bank of Kentucky* v. *Wister* (1829), 3 Pet. (28 U. S.) 318. In the former of these cases, it was held that the fact that the State was a corporator, and in the latter the fact that it was a stockholder in a bank, would not relieve the bank from suit.

The exemption of the State from suit is a privilege which may be waived either formally by statute or general law: *Curran* v. *Arkansas* (1853), 15 How. (56 U. S.) 304; *Hartman* v. *Greenhow* (1880), 102 U. S. 672; *Poindexter* v. *Greenhow* (1884), 114 Id. at p. 230; or by appearing voluntarily to the action: *Clark* v. *Barnard*. But the State may appear for the purpose of protesting, without thereby waiving its immunity from suit: *Georgia* v. *Jesup* (1882), 106 U. S. 458. And the State, having by general law consented to be sued, may subsequently withdraw its consent without impairing the obligation of the contract: *Beers* v. *Arkansas*

(1857), 20 How. (61 U. S.) 527; *Railroad Company* v. *Tennessee* (1879), 101 U. S. 337; *Railroad Company* v. *Alabama* (1879), Id. 832; *In re Ayers* (1887), 123 Id. at p. 505.

The effect of the establishment of the doctrine of the nonsuability of the State, as was observed by Justice MATTHEWS, is to create an important distinction in respect to their enforcement, between the rights of individuals under the Constitution as against each other and as against the States. This is readily illustrated by reference to the contract clause of the Constitution. The injunction against impairing the obligation of contracts was intended to be as binding against States as against individuals. And yet, when the State has by statute impaired the obligation of a contract, it is only the individual who sets it up who is precluded from defence under the unconstitutional statute. The State when sued, while equally bound to respect the contract, gains the benefit of its breach through the shelter of immunity from process. This difference in practical status seems to Justice HARLAN to have been unintended, and he accordingly has been inclined to insist, in his dissenting opinions, upon the enforcement of the contract clause against the States, wherever by any possibility of construction the State can be deemed not a defendant. The majority of the Court, on the other hand, recognizing the Eleventh Amendment as operating as well upon the contract clause as upon other parts of the original Constitution, have been inclined to give it its fullest force. The most significant conclusion of the Court, however, is that, aside from the Eleventh Amendment, the principles of public law require the State in its sovereign capacity to be relieved from suit, and that these principles control the words of the Constitution themselves. This conclusion forcibly appears in the case of *Hans* v. *Louisiana*, the judgment in which, although entered by a unanimous Court, has not been received without criticism. (See an interesting article by a jurist, in *The Independent*, *infra*.)

The decisions of the Supreme Court upon this subject of government nonsuability, show a careful recognition of the

inviolability of State immunities no less than those of the National Government, and, aside from their value from a legal standpoint, serve as protests against the view that obtains in some quarters that the Court is inclined to overlook the constitutional limitations that are of benefit to the States. Politically speaking, it could be wished that all the States would, for themselves, by proper legislation, follow the example set by the United States in establishing the Court of Claims, and permit themselves to be sued. But so long as the doctrine of State immunity from suit remains to any extent part of our law, the profession will be able to advise with some degree of satisfaction on the subject, now that its definite meaning has been at length evolved in the discussions and conclusions of the Supreme Court.

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A STRANGE DECISION BY THE UNITED STATES SUPREME COURT.

BY A JURIST.

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The Supreme Court of the United States has during all its existence enjoyed the confidence and respect of the public to a remarkable degree, and that confidence has been well deserved. Its decisions have been distinguished by great learning, careful investigation, and convincing reasoning. In almost all cases its judgments have met with immediate and general approval; yet it must be admitted, and it is admitted by the Court, that a mistake has sometimes occurred. The instances of mistake have been marvelously rare. Considering how great has been the burden imposed upon it, and the broad jurisdiction committed to it by the Constitution, it is a wonder that the Court has not much more frequently fallen into error. But the infrequency of mistakes naturally invites attention to one when it has been made, and especially when the consequences of the mistake are far-reaching and hurtful. One such, it is believed, the Court has quite recently made. It was in the decision of the case of *Hans against the State of Louisiana* (1890), 134 U. S. 1. The facts of that case, stated so far as it is necessary to state them, in order to exhibit what the Supreme Court has decided, were the following: Hans, a citizen of Louisiana, brought suit in the Circuit Court of the United States against the State of Louisiana to recover the amount of certain coupons for interest, annexed to bonds of the State, issued under the provisions of an act of the State Legislature, enacted in 1874. The bonds